

**U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
RECORD OF DECISION
WEST HAY CREEK FEDERAL COAL LEASE APPLICATION
WYW151634
CAMPBELL COUNTY, WYOMING**

INTRODUCTION

Triton Coal Company, LLC, a wholly owned subsidiary of Vulcan Intermediary, LLC, filed an application with the Bureau of Land Management (BLM) to lease a tract of Federal coal as a maintenance tract for the Buckskin Mine on August 31, 2000. The tract is referred to as the West Hay Creek Lease By Application (LBA) Tract. A maintenance tract is a tract of Federal coal that is adjacent to and can be mined by an existing coal mine. The West Hay Creek LBA Tract is adjacent to the Buckskin Mine, which is located in northern Campbell County, approximately twelve miles north of Gillette, Wyoming (Attachment 1-Figure 1). In May 2003, Arch Coal, Inc. announced it was purchasing Vulcan Coal Holdings, LLC, including the Buckskin Mine. Subsequently, Arch Coal, Inc announced that it signed an agreement to sell the Buckskin Mine to Kiewit Mining Acquisition Company. On August 20, 2004, Arch announced the completion of the purchase of Triton Coal Company and completion of the sale of the Buckskin Mine to Kiewit Mining Acquisition Company. Assignments of the Federal coal lease rights from Triton Coal Company, LLC to a subsidiary of Kiewit Mining Group are pending.

The West Hay Creek LBA Tract was assigned case file number WYW151634. As applied for, it includes approximately 838.0975 acres and the applicant estimates that the tract as applied for includes approximately 145 million tons of in-place Federal coal reserves in Campbell County, Wyoming. The tract was applied for under the Code of Federal Regulations (CFR) at 43 CFR Subpart 3425.

BACKGROUND

The Lease By Application Process

The Buckskin Mine has a permit approved by the Wyoming Department of Environmental Quality Land Quality Division (WDEQ/LQD) and a Mineral Leasing Act (MLA) mining plan approved by the Secretary of the Interior to conduct surface coal mining operations on their existing coal leases. The mine also has an air quality permit approved by the Wyoming Department of Environmental Quality Air Quality Division (WDEQ/AQD) which allows mining of up to 27.5 million tons of coal per year.

Under the LBA process, maintenance tracts are nominated for leasing by companies with adjacent existing mines. To process an LBA the BLM evaluates the quantity, quality, maximum economic recovery (MER) and fair market value (FMV) of the Federal coal and evaluates the

environmental impacts of leasing and mining the Federal coal. A Federal coal lease conveys the mining rights to the lessee but does not authorize mining. The impacts of mining are considered in the environmental analysis because mining is a logical consequence of issuing a maintenance lease. BLM prepared the *West Hay Creek Coal Lease Application Environmental Impact Statement* (EIS) to evaluate the impacts of leasing the West Hay Creek LBA Tract. The Office of Surface Mining Reclamation and Enforcement (OSM) is a cooperating agency on the EIS because OSM is the Federal agency which administers programs that regulate surface coal mining in accordance with the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

By law and regulation the LBA process is an open, public, and competitive leasing process; bidding is not restricted to the applicant. The Buckskin Mine applied for the West Hay Creek LBA Tract because it is adjacent to their existing approved mining operations and they can mine it as a maintenance tract. In the *West Hay Creek Coal Lease Application EIS*, the alternatives analyzed in detail assume that the applicant will be the successful bidder if a competitive sale is held. As shown in Attachment 1-Figure 1, the West Hay Creek LBA Tract is not adjacent to any other existing surface coal mines.

Recent Coal Leasing Activity in the Wyoming Powder River Basin

Since decertification of the Powder River Federal Coal Region in 1990, eleven Federal coal leases in Campbell and Converse counties, Wyoming, have been issued after competitive sealed-bid sales using the LBA process. These leases include approximately 27,458 acres and 3.178 billion tons of mineable coal (see Table 1-1, *West Hay Creek Coal Lease Application EIS*). Ten of the new leases were issued to the following existing mines for the purpose of extending operations at those mines: Jacobs Ranch Mine (2), Black Thunder Mine (2), North Antelope/Rochelle Complex (2), Eagle Butte Mine (1), Antelope Mine (2), and North Rochelle Mine(1). In 1992 the West Rocky Butte Tract adjacent to the existing Rocky Butte lease was leased to the Northwestern Resources Company who planned to start a new mine. Caballo Coal Company, a subsidiary of Peabody Holding Company, Inc. and operator of the adjacent Caballo Mine, now holds both of the Rocky Butte leases.

In 1974, 1979, and 1981 the BLM prepared three regional EISs analyzing the impacts of surface coal mining in the Wyoming portion of the Powder River Basin. In 1984 a fourth regional EIS was prepared and issued in draft form, but it was not made final and the proposed actions were not implemented. The Buckskin Mine was included in the impact analyses in the 1979, 1981, and 1984 documents. All of the mines currently in operation in the Wyoming portion of the Powder River Basin were included in the 1981 and 1984 EIS analyses. Since the 1990 decertification of the Powder River Federal Coal Production Region, the BLM has prepared six environmental assessments (EAs) and seven EISs to evaluate the impacts of leasing tracts of Federal coal in the Powder River Basin in Wyoming. Most recently, the *Final South Powder River Basin Coal EIS* was mailed to the public in December 2003 and the *Final West Hay Creek Coal Lease Application EIS* was mailed to the public in June 2004.

Pending Coal Leasing Applications and Other Proposed Projects
In the Wyoming Powder River Basin

There are eight pending maintenance lease applications in the Wyoming portion of the Powder River Basin including the West Hay Creek LBA Tract. The pending lease applications currently include approximately 1.98 billion tons of Federal in-place coal. In addition to the West Hay Creek LBA Tract, the pending applications and associated mines are: NARO North and NARO South, North Antelope/Rochelle Complex; Little Thunder, Black Thunder Mine; West Roundup, North Rochelle Mine; West Antelope, Antelope Mine; Maysdorf, Cordero-Rojo Mine; and West Extension, Eagle Butte Mine. A sale has been held for the NARO South LBA Tract and lease issuance is pending.

In addition to the ongoing coal leasing and mining, oil and gas leasing and development have occurred and are occurring in this area. Both conventional and coal bed natural gas (CBNG) wells have been drilled in the area north of Gillette. Conventional and CBNG resources are currently being recovered from areas held in Federal, State, and private oil and gas leases in this area, and additional CBNG drilling and development is currently proposed. Federal oil and gas lease ownership in the West Hay Creek LBA Tract is described in Figure 3-15 and Table 3-10 of the final EIS. Table 3-10 was updated between the preparation of the draft and final EIS documents to reflect changes in lease ownership. Federal oil and gas lessees and private interests identified by the applicant were included on the mailing list for the *West Hay Creek Coal Lease Application EIS*; they were notified of the date and time of the scoping meeting that was held in June 2002 and the public hearing that was held in April 2003; they received copies of the Draft and Final EIS documents. BLM received comment letters on both the draft and final EIS documents from one CBNG operator expressing concerns about the impact that the proposal to lease the Federal coal in the West Hay Creek LBA tract would have on current and proposed oil and gas operations on the tract. These letters and BLM's responses to these letters are included in Appendix H of the *Final West Hay Creek Coal Lease Application EIS* and in Attachment 2.

The Geology and Mineral section of Chapter 4 of the Final EIS includes a summary of an analysis of CBNG resources in the West Hay Creek LBA Tract prepared by the BLM Wyoming Reservoir Management Group (WSO-RMG). The WSO-RMG estimated that, as of 2000, the coal in the West Hay Creek LBA Tract had an average content of approximately 11.74 standard cubic feet of CBNG per ton of coal and the estimated recoverable CBNG resource in the tract at that time was approximately 1.88 billion cubic feet, under the BLM's selected tract configuration. There are currently six producing CBNG wells and three shut-in CBNG wells located within the West Hay Creek LBA Tract and there are approved permits to drill three additional CBNG wells under the selected tract configuration.

There are no producing conventional oil and gas wells on the West Hay Creek LBA Tract; one conventional well is reported as plugged and abandoned. CBNG and conventional well

information is based on the Wyoming Oil and Gas Conservation Commission database as of July 2004.

There are several mechanisms that can be used to facilitate recovery of the conventional oil and gas and CBNG resources prior to mining if the Federal coal in the tract is leased now:

- BLM will attach a Multiple Mineral Development stipulation to the Federal coal lease which states that BLM has the authority to withhold approval of coal mining operations that would interfere with the development of mineral leases issued prior to the coal lease [see Attachment 3(c)].
- Conventional oil and gas wells must be abandoned while mining and reclamation operations are in progress but could be recompleted or redrilled following mining if the value of the remaining reserves would justify the expense of reestablishing production.
- BLM has a policy in place on CBNG-coal conflicts (BLM Instruction Memorandum No. 2003-253), which directs BLM decision-makers to optimize the recovery of both resources and ensure that the public receives a reasonable return. This memorandum offers royalty incentives to CBNG operators to accelerate production in order to recover the natural gas while simultaneously allowing uninterrupted coal mining operations. In addition, this memorandum also states that it is the policy of the BLM to encourage oil and gas and coal companies to resolve conflicts between themselves; and when requested, the BLM will assist in facilitating agreements between the companies.
- CBM is currently being produced by several wells on the West Hay Creek LBA Tract and several others are proposed for drilling. Mining of the West Hay Creek LBA Tract cannot occur until the coal lessee has a permit to mine the tract approved by the Wyoming Department of Environmental Quality and a MLA mining plan approved by the Secretary of the Interior. Before the MLA mining plan can be approved, BLM must approve the Resource Recovery and Protection Plan for mining the tract. Prior to approving the Resource Recovery and Protection Plan, BLM can review the status of CBNG and conventional oil and gas development on the tract and the mining sequence proposed by the coal lessee. The permit approval process generally takes the coal lessee several years, during which time CBNG resources can continue to be recovered.
- Prior to mining the Federal coal, the coal lessee can negotiate an agreement with owners and operators of existing oil and gas facilities on the tract, including owners and operators of oil and gas well and pipeline facilities, regarding removal of those facilities prior to mining.

Other proposed developments in the Wyoming Powder River Basin that have advanced to the planning and permitting stages and that could be completed in the foreseeable future include: the Wygen II coal-fired power plant at the Black Hills Corporation energy complex near the

Wyodak Mine site in Gillette, Wyoming; the Two Elk coal-fired power plant proposed by the North American Power Group (NAPG), which would be located east of the Black Thunder Mine; and a railroad line from the Powder River Basin to Minnesota proposed by Dakota, Minnesota, and Eastern Railroad (DM&E). The proposed Wygen II power plant could be expected to have overlapping impacts with the impacts of mining the West Hay Creek LBA Tract due to the proximity of the Buckskin Mine to Gillette. The impacts of mining the West Hay Creek LBA Tract would not be expected to overlap with the impacts of building and operating the Two Elk power plant or the DM&E Powder River Basin Expansion Project due to the distance between the Buckskin Mine and these proposed projects. The Air Quality Division of the Wyoming Department of Environmental Quality approved a permit for the Wygen II plant in September 2002, but the National Park Service appealed that decision out of concern for potential visibility impacts at Badlands and Wind Cave National Parks.

The proposed power plants and the DM&E railroad line and the ongoing and proposed oil and gas operations (including CBNG) are separate projects being developed independently of the issuance of a maintenance coal lease for the West Hay Creek LBA Tract. If these other projects are developed as proposed and the West Hay Creek LBA Tract is leased and mined as proposed, there would be some overlap between the environmental impacts of constructing and operating some of those projects and the environmental impacts of mining the Federal coal tract. The cumulative effects of all of these projects (the Wygen power plant, the Two Elk power plant, the DM&E railroad, the ongoing and proposed oil and gas development and production, and the coal mining that would follow the leasing of West Hay Creek LBA Tract (and other pending LBA tracts) are described in the *West Hay Creek Coal Lease Application EIS*. They were also described in the *Final Environmental Impact Statement and Proposed Plan Amendment for the Powder River Basin Oil and Gas Project* (BLM-WY 2003).

DECISION

The decision is to select Alternative 2 as described in Chapter 2 of the *West Hay Creek Coal Lease Application EIS*. Under Alternative 2, a lease for the West Hay Creek LBA Tract, Federal coal tract WYW151634, as modified by the BLM, would be issued to the successful qualified high bidder, if the highest bid received at a competitive lease sale meets or exceeds the FMV as determined by the BLM and if all other leasing requirements are met. The competitive lease sale will be held under the regulations found at 43 CFR Subpart 3422, Lease Sales. As described under Alternative 2 in the EIS, Federal coal tract WYW151634 includes 921.1575 acres more or less and the applicant estimates that the modified tract contains approximately 160 million tons of in-place Federal coal resources in Campbell County, Wyoming.

This decision is consistent with the *Approved Resource Management Plan for Public Lands Administered by the BLM Buffalo Field Office* (2001, amended 2003). I have incorporated by reference in this decision standard coal lease stipulations addressing compliance with basic requirements of the environmental statutes and have attached BLM special stipulations

(Attachment 3).

The U.S. Fish and Wildlife Service has provided written concurrence for leasing the West Hay Creek LBA Tract pursuant to section 7(a)(2) of the Endangered Species Act of 1973, as amended (Attachment 4).

In the event that the bid or bids submitted at the competitive lease sale of the West Hay Creek LBA Tract do not meet or exceed the FMV as determined by the BLM, the BLM may schedule a follow-up sale. If needed, the BLM will consider additional re-offers.

Under the Proposed Action, it is assumed that the applicant will be the successful bidder on the West Hay Creek LBA Tract and that the coal will be mined, processed and sold by the Buckskin Mine. If the tract is mined, it would be environmentally preferable to mine and reclaim the West Hay Creek LBA Tract as a maintenance lease in a logical sequence with the ongoing mining and reclamation operations at an adjacent existing mine. This would be consistent with the analysis of the impacts described in the EIS.

REASONS FOR THE DECISION

The reasons for selecting the Proposed Action are as follows:

- The decision to offer 921.1575 acres containing approximately 160 million tons of in-place Federal coal reserves, in response to the coal lease application received August 31, 2000, is in conformance with the BLM land use plan covering this area.
- The *West Hay Creek Coal Lease Application EIS* was prepared in response to an application BLM received to lease a tract of Federal coal to an existing mine in Wyoming. The environmental impacts of this decision were fully disclosed in that EIS. Public comment was addressed in the Final EIS.
- The purpose of the Buckskin Mine's application for the West Hay Creek LBA Tract was to allow them access to a continuing supply of low sulphur compliance coal that would be sold to power plants for the purpose of generating power. Continued leasing of the low sulphur Powder River Basin coal enables coal-fired power plants to meet Clean Air Act requirements without constructing new power plants, revamping existing plants, or switching to other alternative fuels. Generally, the costs of constructing new power plants, retrofitting or revamping existing plants, or re-tooling and switching to other alternative fuels effect additional costs to energy customers.
- The LBA tract configuration under Alternative 2 provides for maximum economic recovery of the coal resource.
- When an application to lease Federal coal is submitted, the BLM must decide whether to

process the application and hold a competitive sealed-bid lease sale for the coal or reject the application and not offer the coal for lease. Regardless of the decision, the BLM must notify the applicant in a timely fashion of its decision. The EIS provides the BLM with the information needed to meet its obligations to respond to an application in a timely fashion.

- A primary goal of the National Energy Policy is to add energy supplies from diverse sources including domestic oil, gas, and coal in addition to hydropower and nuclear power. The BLM recognizes that the continued extraction of coal is essential to meet the nation's future energy needs. As a result, private development of Federal coal reserves is integral to the BLM coal leasing programs under the authorities of the Mineral Leasing Act of 1920, the Federal Land Policy and Management Act of 1976 and the Federal Coal Leasing Amendments Act of 1976.
- The BLM coal leasing program encourages the development of domestic oil, gas, and coal reserves and reduction of the United States' dependence on foreign sources of energy. The leasing and subsequent mining of Federal coal reserves provide the United States, the State of Wyoming, and affected local counties with income in the form of lease bonus payments, lease royalty payments, and tax payments; production of Federal coal also provides the public with a supply of cost-efficient, low sulphur coal for power generation. The alternative selected meets the goals of the National Energy Policy and achieves the objectives of the Federal coal leasing programs managed by the BLM. It is strongly supported by the Wyoming Governor and other State and local officials.

PUBLIC INVOLVEMENT

On September 12, 2000, the BLM published notice of the receipt of this lease application in the *Federal Register*. Copies of this notice were sent to voting and non-voting members of the Powder River Regional Coal Team (PRRCT), including the governors of Wyoming and Montana, the Northern Cheyenne Tribe, the Crow Tribe, Forest Service, OSM, U.S. Fish & Wildlife Service, U.S. National Park Service, U.S. Geological Survey, and others.

On October 25, 2000, the PRRCT reviewed coal lease application WYW151634 at a public meeting in Cheyenne, Wyoming. The PRRCT recommended that the BLM process the application. The BLM published its Notice of Intent to Prepare an EIS and a Notice of Scoping in the *Federal Register* on June 25, 2002. Scoping notices were mailed to Federal, State and local government agencies, conservation groups, commodity groups, and individuals who could be impacted by this lease application in June 2002. The mailing list was jointly developed by BLM and the applicant. On June 26, 2002, a public scoping meeting was held in Gillette, Wyoming. The scoping period extended through July 31, 2002.

The *Draft West Hay Creek Coal Lease Application EIS* was mailed to the public and other interested parties in March 2003. On March 28, 2003, the Environmental Protection Agency (EPA) published

its Notice of Availability of the Draft EIS in the *Federal Register*. BLM published a Notice of Availability and Notice of Public Hearing in the *Federal Register* on March 21, 2003. With the publication of the EPA's Notice of Availability in the *Federal Register*, the 60-day review and comment period on the Draft EIS started on March 28, 2003, and ended on May 30, 2003. A formal public hearing was held on April 16, 2003, in Gillette, Wyoming to solicit public comment on the Draft EIS, the proposed lease sale, and the FMV and MER of the Federal coal included in the tract. The Final EIS was mailed to the public and other interested parties in June 2004. The EPA published a Notice of Availability of the Final EIS in the *Federal Register* on June 10, 2004; the BLM published a Notice of Availability of the Final EIS in the *Federal Register* on June 17, 2004.

During the EIS scoping period the BLM received eight written comments; one oral comment was made at the public scoping meeting. Eight written comments were received on the Draft EIS; they are included in Appendix H of the Final EIS. One party commented at the April 16, 2003, public hearing. Four written comments were received on the Final EIS; they are included, with BLM responses, in Attachment 2. The written comments and the transcript of the formal hearing are on file at the BLM Casper Field Office and BLM Wyoming State Office, Cheyenne, Wyoming. All comments that were received during the EIS process were considered in the preparation of both the Draft and Final EISs, and in this Record of Decision.

ALTERNATIVES ANALYZED IN DETAIL

The EIS analyzes four alternatives for the West Hay Creek LBA Tract in detail: the Proposed Action, Alternative 1 (the No Action Alternative), and Alternatives 2 and 3. These alternatives are summarized below. A full description of each of the alternatives analyzed in detail may be found in Chapter 2 of the EIS.

Proposed Action: Hold a Competitive Sale of Federal Coal Lands as Applied For

The lands that were applied for in the West Hay Creek LBA Tract would have been offered for lease at a competitive sale. As applied for, the tract includes approximately 838.0975 acres, more or less. The applicant estimates that it includes approximately 145 million tons of in-place Federal coal (see Attachment 1-Figure 2) and that approximately 130 million tons or 90 percent of that coal would be recoverable. This alternative assumes that the applicant would be the successful bidder on the West Hay Creek LBA Tract and that the coal would be mined, processed and sold by the Buckskin Mine.

Alternative 1: No Action Alternative

The application to lease the Federal coal included in the West Hay Creek LBA Tract would be rejected and the tract would not be offered for lease at this time. Currently permitted mining activity at the adjacent Buckskin Mine will continue, with or without leasing the West Hay Creek LBA Tract, and portions of the LBA tract that are adjacent to the existing mine will be disturbed to recover all of the coal in the existing leases. Assuming that this tract will never be

leased and coal removal and the associated disturbance will never occur, this alternative would be the environmentally preferable alternative. However, selection of this alternative would not preclude future applications to lease all or part of the Federal coal included in this tract.

**Alternative 2: (Selected Alternative) Hold a Competitive Sale for a Tract
As Modified by BLM to Increase Potential Competitive Interest In and
Reduce the Potential for Bypass of Adjacent Unleased Federal Coal**

In reviewing the West Hay Creek coal lease application, BLM identified a study area adjacent to the tract which is shown in Attachment 1-Figure 2 and identified as “area added by BLM under Alternative 2.” The study area includes unleased Federal coal located both southeast of and north of the applied-for tract. BLM wanted to evaluate whether adding the coal in the study area to the applied-for tract would potentially increase competitive interest in the tract, allow for more efficient recovery of the Federal coal in this area, or reduce the likelihood that some of the remaining unleased Federal coal in this area would be bypassed in the future.

The southeast portion of the study area is an unleased lot of Federal coal that is located between the tract as applied for and the existing leases at the Buckskin Mine (See Attachment 1-Figure 2). The mine did not incorporate this area into their application because their current geologic model does not indicate that any mineable coal is present. BLM is concerned that any mineable Federal coal which might be present in this lot will be bypassed if it is not leased with the surrounding Federal coal.

In identifying the northern study area, BLM wanted to evaluate the potential that another configuration of the tract would provide for more efficient recovery of the Federal coal and/or increase competitive interest in the West Hay Creek LBA tract and the remaining unleased Federal coal in this area.

Under the Selected Alternative the BLM is increasing the size of the West Hay Creek LBA Tract by adding the lot located southeast of the tract as applied for, in order to avoid bypass of any recoverable coal in that lot, and by adding a portion of the study area north of the tract, in order to allow more efficient recovery of the Federal coal. With its boundaries amended, the West Hay Creek LBA Tract will be offered for lease at a competitive sale. By amending the boundaries, the BLM is adding about 83.06 acres to the Tract as applied for (see Attachment 1-Figure 2 and Table 1).

The total surface included in the tract as modified is 921.1575 acres more or less. The applicant estimates that the modified tract includes approximately 160 million tons of in-place coal and that approximately 140 million tons of that coal would be recoverable.

Table 1: Description of lands to be offered for competitive sale under Alternative 2

The legal description of the West Hay Creek LBA Tract under the BLM’s Selected Alternative

is:

T. 52 N., R. 72 W., 6th P.M., Campbell County, Wyoming

Section 17	Lot 5 (S2)	20.53
	6 (S2)	20.53
	7 (S2)	20.695
	8 (S2)	20.695
	9-14, inclusive;	247.24
Section 18	Lot 12 (SE4)	10.6725
	13 (E2)	21.035
	20 (E2)	20.75
Section 19	Lot 5 (E2)	20.71
	12 (E2)	20.84
	13 (E2)	20.935
	20 (E2)	21.065
Section 20	Lot 2 (W2, W2E2)	31.1175
	3-6, inclusive	165.38
	7 (W/2, W2E2)	31.1325
	10 (W2, W2E2)	31.1475
	11-14, inclusive	165.52
	15 (W2, W2E2)	31.1625
Total acres		921.1575 acres

Alternative 2 for the West Hay Creek LBA Tract assumes that the applicant would be the successful bidder on the tract if a lease sale is held and that the tract would be mined as a maintenance lease for the Buckskin Mine. There are no other active coal mines adjacent to the tract.

Alternative 3: Hold a Competitive Sale for a Tract
As Modified by BLM to Reduce the Potential for Bypass of Adjacent Unleased Federal Coal

Under Alternative 2, the West Hay Creek LBA Tract, as modified by BLM would have been offered for lease at a competitive sale. The size of the tract would have been increased by approximately 31.1625 acres to include the lot of unleased Federal coal located between the tract as applied for and the existing Buckskin coal leases. This area is included in the Selected Alternative, discussed above. The applicant estimates that the tract under this alternative contains approximately 145 million tons of in-place coal, and that approximately 130 million tons of that coal would be recoverable.

ALTERNATIVES CONSIDERED BUT NOT ANALYZED IN DETAIL

Further descriptions of these alternatives may be found in Chapter 2 of the Final EIS.

Alternative 4: As under the Proposed Action, BLM would hold a competitive coal lease sale for the tract as applied for and then issue a lease to the successful bidder. This alternative assumed that the applicant would not be the successful bidder, and that the Federal coal would be developed as a new stand-alone mine. BLM estimates that 500 to 600 million tons of coal would be needed to attract a buyer interested in constructing a new mine in the Wyoming Powder River Basin. This alternative was considered and eliminated from detailed study because the current economics of mining in the Powder River Federal Coal Region appear to make construction of a new mine economically unfeasible on a tract of Federal coal of this size.

Alternative 5: The BLM would have postponed a sale of the West Hay Creek LBA Tract to potentially increase the benefits to the public if coal prices increase within the Powder River Basin or to allow recovery of additional CBNG resources in the tract prior to mining.

This alternative was not analyzed in detail because it would not produce significantly different impacts than other alternatives analyzed in detail. Royalty and tax payments are collected at the time the coal is sold. They increase as coal prices increase, which allows the United States to benefit if coal prices have increased by the time of mining. Conventional oil and gas production and distribution facilities on the tract would have to be removed prior to mining, but mining would not disturb any remaining conventional oil and gas resources within the tract. If there are economically recoverable conventional oil and gas resources remaining in the area of the tract, they could be recovered after the coal is mined and the tract is reclaimed. Recovery of CBNG resources on the tract is occurring and recovery of a substantial portion of those resources on the tract would be anticipated after lease issuance because, as discussed in the Background section above, express terms of the proposed lease will protect the right of the holder of the first mineral lease issued for the tract to produce commercial quantities of CBNG. BLM has a policy in place on CBNG-coal conflicts, which will allow the agency to offer the oil and gas lessee royalty reductions as incentives to accelerate production prior to the commencement of surface coal mining on the tract. The environmental impacts of mining the Federal coal at a later time as part of an existing mine would be expected to be similar and about equal to the Proposed Action. If a new mine start is required to recover the coal in this tract, the environmental impacts would be expected to be greater than if the tract is mined as an extension of an existing mine.

MITIGATION, COMPLIANCE AND MONITORING

If the West Hay Creek LBA Tract is leased, the lease will contain the standard coal lease stipulations. The attached BLM Special Stipulations (Attachment 3) regarding cultural resources, paleontological resources, threatened and endangered species, multiple mineral development of oil and gas or coal resources or both, resource recovery and protection, and public land survey

will be added to the lease.

After a Federal coal lease is issued, SMCRA gives the OSM authority to administer programs that regulate surface coal mining operations. The WDEQ regulates surface coal mining activities in Wyoming. If the Buckskin Mine is the successful, qualified high bidder on Federal coal tract WYW151634, a permit revision must be approved by the WDEQ/LQD and a MLA mining plan revision must be approved by the Secretary of the Interior before the coal can be mined. The existing mitigation measures specific to the currently approved mine plan for the adjacent mine will be revised to include mitigation measures specific to mining WYW 151634 when the mining permit is amended.

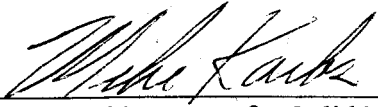
If the successful, qualified high bidder does not operate an adjacent mine and proposes to construct and operate a new mine, then a new permit and a new mining plan must be prepared and approved before the coal can be mined. Before WYW151634 can be mined, mitigation measures and monitoring plans specific to a mining and reclamation plan must be attached to any revised existing or new mining and reclamation plan.

Prior to mining of the areas subject to the coal lease all practicable means to avoid or minimize environmental harm will be adopted as leasing stipulations or, as consistent with normal practices, can be expected to be adopted as conditions of the mining permit. To ensure that the revised plan is in compliance with the leasing stipulations, BLM has a responsibility to review the Resource Recovery and Protection Plan prior to approval of the mining plan. Before any mining of the West Hay Creek LBA Tract can begin, the Resource Recovery and Protection Plan must be approved by the BLM, the permit, or permit revision, must be approved by WDEQ/LQD, and the MLA mining plan, or plan revision, must be approved by the Assistant Secretary of the Interior.

RECOMMENDED ALTERNATIVE

I recommend that, after a competitive lease sale, Federal coal tract WYW151634 and its associated 921.1575 acres more or less, be issued to the successful, qualified high bidder provided it is determined that the highest bid meets, or exceeds, the FMV of the tract as

determined by the BLM and that all other leasing requirements are met. This is Alternative 2 with the modified tract configuration described in this record of decision. The competitive lease sale will be held in accordance with the requirements at 43 CFR Subpart 3422. The lease will be subject to the attached BLM special lease stipulations and Forest Service Notice (Attachment 3).



Assistant Field Manager for Solid Minerals
Casper Field Office

9/17/2004

Date

APPROVAL

I agree with the recommendation of the Assistant Field Manager for Solid Minerals and approve the decision to offer Federal coal tract WYW151634 for competitive lease sale.



BLM Wyoming State Director
ASSOCIATE

9/21/04
Date

Concur:


Director, BLM

9-29-04
Date

for 
Assistant Secretary
Land and Minerals Management, DOI

10.01.04
Date

ATTACHMENTS

1. Figures 1, and 2
2. Comment letters that received on the Final EIS for the West Hay Creek LBA Tract and BLM responses to those comments
3. BLM Special Coal Lease Stipulations for the West Hay Creek Federal Coal Lease Tract (WYW151634)
4. USFWS letter in response to BLM formal request for consultation under Endangered Species Act, Section 7.

ATTACHMENT 1:

FIGURES 1 & 2

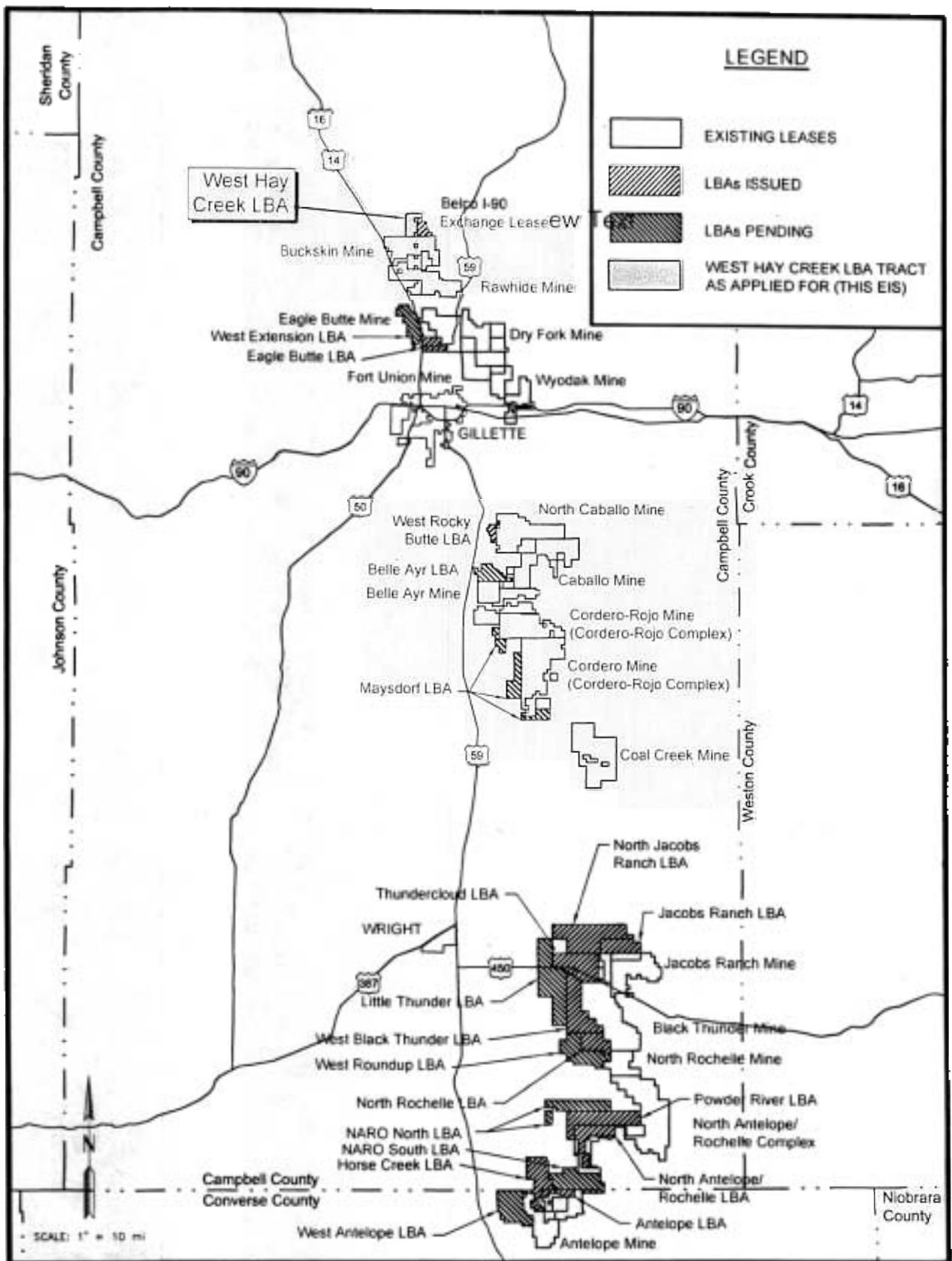


Figure 1. General Location Map with Federal Coal Leases and LBAs.

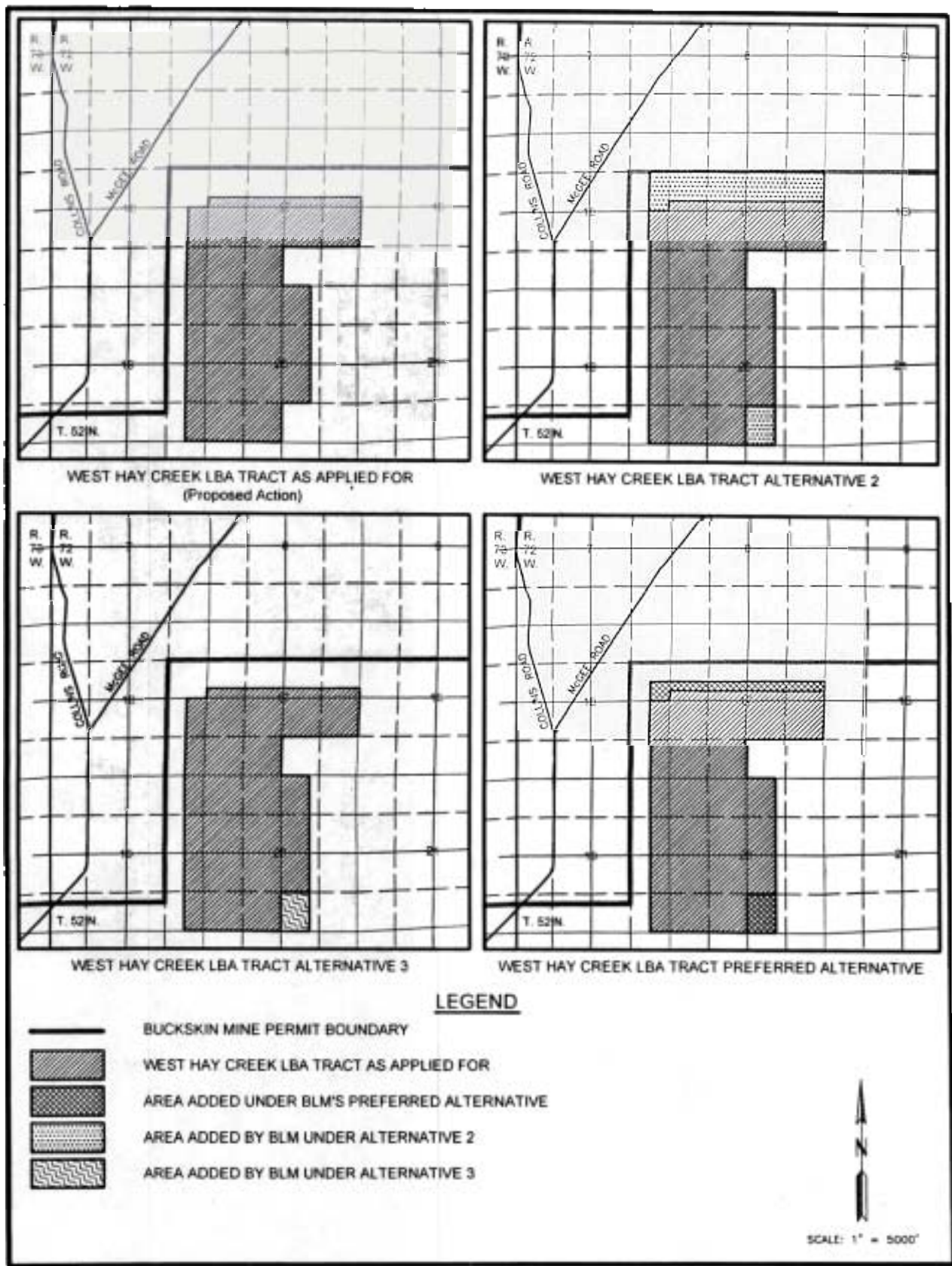


Figure 2. West Hay Creek LBA Tract Configurations.

ATTACHMENT 2:

**FINAL EIS COMMENT LETTERS
AND BLM RESPONSES**

Majestic
Petroleum Operations, LLC
P.O. Box 580 Story, WY 82842
(307)683-2755 FAX (307)683-3136

CC: Julia Weaver
(922) pk
6-30-04

June 15, 2004

Bureau of Land Management
Casper Field Office, Attn: Patricia Karbs
2987 Prospector Drive
Casper, WY 82604

Re: Comments on Final EIS West Hay Creek - WYW151634

Dear Sirs:

Majestic Petroleum disagrees with the BLM's findings in the Response to Majestic Petroleum Operations, LLC letter on Page H-3 of the Final EIS. The BLM states the estimate of economic reserves in the LBA area of 54,800 MCF. The seven wells in this immediate area which Majestic operates (3 in the LBA, 4 in the adjacent I-90 Exchange tract) have averaged 86,718 MCF in their 21 month life. The worst well has produced 55,202 MCF. The best has recovered 154,031 MCF to date. Average recovery to date is 86,718 MCF. At these production rates and the current rate of decline, these wells have many, many years of economic production left.

To allow this area to be mined through will cause a large economic loss to the mineral owners, operator and the State of Wyoming. Majestic has attempted to reach a settlement agreement with Triton, but have been unable to do so. We realize that the stipulations listed in Appendix D may be attached to the West Hay Creek LBA. However, we do not feel that those stipulations will protect us. We request that a stipulation be added to the LBA requiring a CBM Mitigation Agreement to be in place between the coal mine and the CBM operator prior to approval of the LBA.

Sincerely,



Michael R. Onstott
President

RECEIVED - BLM
JUN 17 2004
CASPER FIELD OFFICE



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Casper Field Office
2987 Prospector Drive
Casper, Wyoming 82604-2968

3425 (LBA)
WYW151634
(West Hay Creek)

SEP 10 2004

Michael R. Onstott
Majestic Petroleum Operations, LLC
P.O. Box 580
Story, WY 82842

RE: Comments on the Final Environmental Impact Statement (EIS)
for the West Hay Creek Coal Lease Application

Dear Mr. Onstott:

Thank you for providing additional information about coal bed natural gas (CBNG) production from wells completed on the West Hay Creek LBA Tract. As discussed in Chapter 4 of the EIS, the BLM Wyoming State Office Reservoir Management Group (WSO-RMG) estimated potential CBNG reserves in the West Hay Creek LBA tract as of 2000 1) by using decline curve analysis based on production histories of wells in section 18, T. 52 N., R. 72 W. and 2) by calculating estimated coal gas content using publicly available methane adsorption data, coal geology from coal drill holes, and hydrologic data from groundwater monitoring wells operated by the coal mines. As stated in the Final EIS (page 4-7), the results WSO-RMG obtained from the decline curve analysis compared favorably with the results obtained from estimating average CBNG gas content per ton for the tract, but we recognize that the reserves projected by both methods are estimates and are subject to a number of uncertainties in assessing CBNG resources.

There are several mechanisms that can be used to facilitate recovery of the CBNG resources prior to mining if the Federal coal in the tract is leased now:

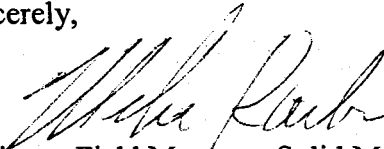
- BLM will attach a Multiple Mineral Development stipulation to the Federal coal lease which states that BLM has the authority to withhold approval of coal mining operations that would interfere with the development of mineral leases issued prior to the coal lease.
- BLM has a policy in place on CBNG-coal conflicts (BLM Instruction Memorandum No. 2003-253), which directs BLM decision-makers to optimize the recovery of both resources and ensure that the public receives a reasonable return. This memorandum offers royalty incentives to CBNG operators to accelerate production in order to recover the natural gas while simultaneously allowing uninterrupted coal mining operations. In addition, this memorandum also states that it is the policy of the BLM to encourage oil and gas and coal companies to resolve conflicts between themselves; and when requested, the BLM will assist in facilitating agreements between the companies.

- Mining of the West Hay Creek LBA Tract cannot occur until the coal lessee has a permit to mine the tract approved by the Wyoming Department of Environmental Quality and a Mineral Leasing Act (MLA) mining plan approved by the Secretary of the Interior. Before the MLA mining plan can be approved, BLM must approve the Resource Recovery and Protection Plan for mining the tract. Prior to approving the Resource Recovery and Protection Plan, BLM can review the status of CBNG and conventional oil and gas development on the tract and the mining sequence proposed by the coal lessee. CBM is currently being produced by several wells on the West Hay Creek LBA Tract and several others are proposed for drilling. The permit approval process generally takes the coal lessee several years, during which time CBNG resources can continue to be recovered.

BLM believes that recovery of a substantial portion of the CBNG resources on the tract will be possible after lease issuance and that express terms of the proposed lease will protect the right of the holder of the first mineral lease issued for the tract.

If you have any further questions, please contact myself or Nancy Doelger at 307-261-7600.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Rader", is written over a faint, circular official stamp.

Assistant Field Manager, Solid Minerals

Lesley Collins

06/28/2004 11:38 AM

To: Mike Karbs/CFO/WY/BLM/DOI@BLM, Pat
Karbs/CFO/WY/BLM/DOI@BLM, Nancy
Doelger/CFO/WY/BLM/DOI@BLM

cc:

Subject: public comment on federal register of 6/17/04 vol 69 no 116 page 33936

----- Forwarded by Lesley Collins/CFO/WY/BLM/DOI on 06/28/2004 11:38 AM -----



jean public
<jeanpublic@yahoo.co
m>

06/26/2004 11:36 AM

To: casper_wymail@blm.gov

cc:

Subject: public comment on federal register of 6/17/04 vol 69 no 116 page 33936

us doi blm - wy 920-1320-el wyw151634
noa west hay creek lease eis - powder river coal

i have concern for the wildlife, birds being driven
out of their habitat and their lives crushed by this
kind of anti -environmental action. i oppose and
object to this leasing, drilling. i also want a fund
set up guaranteed before leasing that would guarantee
no holes or environmental leasing left when lease is
over. the american public should not be left with
environmentally damaged land and holes in the ground.
the lessee should provide an insurance guaranteed bond
fund that will GUARANTEE CLEAN UP.

B. SACHAU
15 ELM ST
FLORHAMPARK NJ 07932

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United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Casper Field Office
2987 Prospector Drive
Casper, Wyoming 82604-2968

3425 (LBA)
WYW151634
(West Hay Creek)

SEP 1 0 2004

B. Sachau
15 Elm Street
Florhampark, NJ 07932

Dear B. Sachau:

Thank you for your interest in and comments on the Notice of Availability for the Final EIS for the West Hay Creek Coal Lease Application.

The West Hay Creek Federal coal tract was proposed for leasing by an existing adjacent surface coal mine (the Buckskin Mine) located north of Gillette, Wyoming. The tract is adjacent to existing leases for the Buckskin Mine. The existing mine has a mining and reclamation plan approved by the Wyoming Department of Environmental Quality, which includes a reclamation bond. The reclamation plan requires the mine to replace the overburden, stockpile the topsoil and replace it, restore basic drainage networks, restore jurisdictional wetlands, and re-establish vegetation using species mandated by the Department of Environmental Quality, the majority of which are native to this area. Following seeding with the final approved seed mixture, a minimum of ten years is required before the final reclamation bond is released. These measures are required by Wyoming State law and by the Federal Surface Mining Control and Reclamation Act. If the West Hay Creek LBA Tract is leased to the applicant, they will have to modify their existing mining and reclamation plan to include the new lease. This plan will be subject to the same State and Federal requirements and it must be approved before the Federal coal in the new lease can be mined.

Currently, the Buckskin Mine posts a Reclamation Performance Bond with the State of Wyoming in insure reclamation. This bond is reviewed and recalculated annually, and would be adjusted if Buckskin acquires and proposes to mine the West Hay Creek tract. Buckskin's current reclamation performance bond totals \$43 million.

If you would like more information about this coal lease application or would like to obtain a copy of the EIS, please contact Nancy Doelger or myself at the BLM Casper Field Office, 2987 Prospector Drive, Casper, WY 82604.

Sincerely,

Assistant Field Manager, Solid Minerals

WYOMING GAME AND FISH DEPARTMENT



"Conserving Wildlife - Serving People"

July 7, 2004

WER 320.02
Bureau of Land Management
Casper Field Office
Final Environmental Impact Statement
West Hay Creek Coal Lease Application
Campbell County

Patricia Karbs
Casper Field Office
Bureau of Land Management
2987 Prospector Drive
Casper, WY 82604

CASPER FIELD
JUL 08 2004

Dear Ms. Karbs:

The staff of the Wyoming Game and Fish Department has reviewed the Final Environmental Impact Statement for the West Hay Creek Coal Lease Application within the Casper Field Office area. We provided terrestrial wildlife and aquatic comments in a letter dated April 23, 2003. We have no additional concerns.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads 'Bill Wickers'.

BILL WICHERS
DEPUTY DIRECTOR

BW:VS:as

cc: Kyndra Miller-Governor's Planning Office
USFWS



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
<http://www.epa.gov/region08>

RECEIVED - BLM

JUL 19 2004

JUL 14 2004

CASPER FIELD OFFICE

Ref: 8EPR-N

Nancy Doelger
Casper Field Office
Bureau of Land Management
2987 Prospector Drive
Casper, WY 82600

Re: West Hay Creek Coal Lease Application
Final EIS, CEQ #040266

Dear Ms. Doelger:

The Region 8 Office of the Environmental Protection Agency has reviewed the *Final Environmental Impact Statement for the West Hay Creek Coal Lease By Application*. The Final Environmental Impact Statement (EIS) assesses the environmental impacts of a lease by application (LBA) tract known as the West Hay tract potentially to the Buckskin Mine operated by Triton Coal Company, LLC within the Wyoming Powder River coal basin. We submit the following comments in accordance with our responsibilities under Section 309 of the Clean Air Act.

Regional Air Quality Degradation EPA's main concern remains ambient air quality in the Powder River Basin (PRB). Coal mines are some of the many sources in the PRB contributing to air quality degradation. EPA continues to work with the BLM, the Wyoming Department of Environmental Quality (DEQ), and other stakeholders through an interagency working group established after the PRB Coalbed Methane EIS to address air quality concerns in the PRB. As we stated in our comments on the Draft EIS, while the Wyoming DEQ has by statute the authority and responsibility to implement air quality mitigation, BLM should have used the Final EIS to disclose any mitigation measures and their effectiveness for air quality impacts regardless of BLM's jurisdiction (CEQ 40 Questions #19b). It does not appear that BLM has responded since the EIS fails to specify the fugitive dust mitigation methods and effectiveness of these methods currently in use at the Buckskin mine.


Nitrogen Dioxide Emissions from Blasting EPA appreciates the response to our concerns about the impacts of nitrogen dioxide (NO₂) emissions from blasting activities and understands the company has made progress in its efforts to reduce the number of blasts that produce NO₂ clouds. We continue to express a concern about controlling public

access by stopping vehicles and school buses to include those county roads that pass through the West Hay LBA area. EPA views this mitigation as less preferable than the mine's ongoing efforts to reduce or eliminate NO₂ emissions during blasting operations.

Lack of Mitigation of Nonjurisdiction Wetlands In our comments on the draft EIS, we indicated our concern regarding whether the 17.5 acres of jurisdictional wetlands and 7.6 acres of nonjurisdictional playa wetlands within the West Hay LBA area will be mitigated with timely and appropriate wetland replacement of equal value. BLM provided a response that the Corps of Engineers will require jurisdictional wetland mitigation but that BLM will not require mitigation for nonjurisdictional wetlands in the West Hay Creek LBA since this is a federally-owned tract of coal underlying private surface ownership. We realize the Corps will conduct its own jurisdictional review prior to mining likely at a much at a later date. However, before BLM completes its decision on this LBA, we request further review of BLM's obligation under the Executive Order 11990. Since all agencies are responsible to assure that their actions do not result in the net loss of wetlands at public-owned facilities, we think intent of the Executive Order would apply to federally-owned coal lands. We request that the BLM reconsider this determination especially in light of important functions provided by these wetlands playas for migratory bird habitat and hydrologic functions. We recommend that the BLM condition the West Hay Creek LBA to require mitigation of the 7.6 acres of playa wetlands that will be lost during mining.

We appreciate your interest in our comments. If you have any further questions, please contact Weston Wilson of my staff at (303) 312-6562.

Sincerely,



Larry Svoboda
Director, NEPA Program
Office of Ecosystems Protection
and Remediation

cc: Dan Olsen, Wyoming DEQ, Cheyenne
Floyd McMullen, OSM, Denver
Chandler Peter, Corps of Engineers, Cheyenne
Jeff Sorkin, Forest Service, Denver

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JUL 19 2004
CASPER FIELD OFFICE



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Casper Field Office
2987 Prospector Drive
Casper, Wyoming 82604-2968

3425 (LBA)
WYW151634
(West Hay Creek)

SEP 1 0 2004

Mr. Larry Svoboda
Office of Ecosystems Protection and Remediation
U.S. Environmental Protection Agency, Region 8
999 18th Street Suite 300
Denver, CO 80202-2466

Dear Mr. Svoboda:

The following comments have been prepared in response to the comments received from the Region 8 office of the Environmental Protection Agency on the *Final Environmental Impact Statement for the West Hay Creek Coal Lease Application*.

Regional Air Quality Degradation: The EIS (Chapter 3) discusses fugitive dust mitigation methods that are used by surface coal mines in the Powder River Basin, including the Buckskin Mine. The Buckskin Mine operates under WDEQ Air Quality Permit No. MD-707, which contains 22 specific permit conditions that the Buckskin Mine must comply with. These permit conditions include requirements to control fugitive dust emissions, maintain fugitive emission controls, monitor fugitive emissions, and report these activities. The Buckskin Mine also monitors adjacent air quality with two continuous R&P TEOM samplers.

Work has begun on a two-year technical study, funded by BLM, to assess current coal development, develop projections of expected future development, and develop data and modeled projects of the effects of projected surface coal mining in the PRB on key resource and social values. This study will include an evaluation of the options available to control mining-related particulate emissions. The results of this study will be available for future coal-leasing environmental analyses.

Nitrogen Dioxide Emissions from Blasting: We agree that efforts to reduce or eliminate NO₂ emissions during blasting operations are preferable to controlling public access to areas that may be exposed to blasting emissions. Generally, NO_x emissions are more prevalent at operations that use the blasting technique referred to as cast blasting, however, the Buckskin Mine does not use large cast blasts to move overburden. The Buckskin Mine has received no complaints in regard to NO_x blast emissions and has stated that its goal is to have complete combustion and no NO_x emissions.

Lack of Mitigation of Non-jurisdictional Wetlands: We have internally reviewed and discussed BLM's jurisdiction with respect to Executive Order 11990 in the case of coal leasing in a split estate situation (where the coal is Federally owned and the surface is privately owned) during preparation of previous coal leasing NEPA analyses and during the preparation of the South Powder River Basin Coal and West Hay Creek NEPA analyses.

As discussed in BLM's responses to comments received from EPA on the draft EIS, BLM does not authorize mining operations or reclamation operations. Specific reclamation plans and procedures are not being either proposed or approved during the leasing process; those plans and procedures are developed and approved after the Federal coal lease is issued.

Mining and reclamation operations are regulated in accordance with the Surface Mining Control and Reclamation Act, which is administered by the Office of Surface Mining Reclamation and Enforcement (OSM). In Wyoming, WDEQ/LQD has been authorized by the Secretary of the Interior to regulate surface coal mining operations and surface effects of underground mining on Federal and non-Federal coal lands, and OSM has oversight responsibilities. Once a Federal coal lease is issued, BLM's jurisdiction is limited to our responsibilities under the Mineral Leasing Act. On private surface, BLM's role in approving the mining and reclamation plan that authorizes mining operations on that Federal coal lease is limited to approval of the Resource Recovery and Protection Plan (R2P2) submitted by the lessee. BLM must approve the R2P2 prior to approval of the Mineral Leasing Act mining plan by the Assistant Secretary of the Interior. In order to approve the R2P2, BLM must make a determination that the proposed mining operation will achieve Maximum Economic Recovery of the Federal coal resources included in the lease [see 43 CFR 3482 (b)]. BLM is not part of the process that authorizes how mining and reclamation operations will be conducted on Federal coal leases; as a result, there is not an effective mechanism for BLM to enforce a lease stipulation that specifies how many acres of wetlands must be restored.

If there are BLM-administered surface lands included in a Federal coal lease, then, as the surface managing agency, BLM can prescribe conditions concerning the use and protection of the nonmineral interests in those lands. On BLM-administered surface lands, BLM would require that all impacts to wetlands of any kind be mitigated. However, there are no BLM-administered surface lands in the West Hay Creek LBA Tract and there have been no BLM-administered surface lands included in any of the twelve Federal coal leases issued since decertification of the Powder River Federal Coal Region in 1990.

The U.S. Army Corps of Engineers requires mitigation of all impacted jurisdictional wetlands in accordance with Section 404 of the Clean Water Act, and determines the number of acres to be restored. WDEQ/LQD required the restoration of some non-jurisdictional wetlands, depending on the values associated with the wetland; they require restoration of playas if they have hydrologic significance.

Under the Buckskin Mine's currently approved mining and reclamation plan (which does not include mining or reclamation operations on the West Hay Creek LBA Tract), 78 acres of wet meadow wetlands, 9 acres of emergent marsh wetlands, and 4 acres of permanent postmining impoundments will be reclaimed. This exceeds the replacement of 8 acres of wet meadow and 1 acre of impoundment currently required by the U.S. Army Corps of Engineers. If the Buckskin Mine acquires a lease for the West Hay Creek LBA Tract, they have indicated they will revise their reclamation plan to include the reclamation of additional wetland habitat.

The Buckskin Mine has a permitted plan to reclaim a 15 acre playa in their reclamation and numerous small, shallow playas. The surface mining of coal in the Powder River Basin generally results in a lowering of the topography due to the removal of 70 to 100 feet of coal. According to the mine, establishment of jurisdictional as well as non-jurisdictional wetlands in this topography will not be problematic and no net loss of wetlands is expected to occur.

If you have any further questions, please contact Nancy Doelger or myself at 307-261-7600.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Kurb". The signature is fluid and cursive, with the first name "Mike" and last name "Kurb" clearly distinguishable.

Assistant Field Manager, Solid Minerals

ATTACHMENT 3:

**BLM SPECIAL COAL LEASE STIPULATIONS
FOR THE WEST HAY CREEK LBA TRACT
(WYW151634)**

SEC. 15. SPECIAL STIPULATIONS -

In addition to observing the general obligations and standards of performance set out in the current regulations, the lessee shall comply with and be bound by the following special stipulations.

These stipulations are also imposed upon the lessee's agents and employees. The failure or refusal of any of these persons to comply with these stipulations shall be deemed a failure of the lessee to comply with the terms of the lease. The lessee shall require his agents, contractors and subcontractors involved in activities concerning this lease to include these stipulations in the contracts between and among them. These stipulations may be revised or amended, in writing, by the mutual consent of the lessor and the lessee at any time to adjust to changed conditions or to correct an oversight.

(a) **CULTURAL RESOURCES** - (1) Before undertaking any activities that may disturb the surface of the leased lands, the lessee shall conduct a cultural resource intensive field inventory in a manner specified by the Authorized Officer of the BLM or of the surface managing agency, if different, on portions of the mine plan area and adjacent areas, or exploration plan area, that may be adversely affected by lease-related activities and which were not previously inventoried at such a level of intensity. The inventory shall be conducted by a qualified professional cultural resource specialist (i.e., archeologist, historian, historical architect, as appropriate), approved by the Authorized Officer of the surface managing agency (BLM, if the surface is privately owned), and a report of the inventory and recommendations for protecting any cultural resources identified shall be submitted to the Assistant Director of the Western Support Center of the Office of Surface Mining, the Authorized Office of the BLM, if activities are associated with coal exploration outside an approved mining permit area (hereinafter called Authorized Officer), and the Authorized Officer of the surface managing agency, if different. The lessee shall undertake measures, in accordance with instructions from the Assistant Director, or Authorized Officer, to protect cultural resources on the leased lands. The lessee shall not commence the surface disturbing activities until permission to proceed is given by the Assistant Director or Authorized Officer.

(2) The lessee shall protect all cultural properties that have been determined eligible to the National Register of Historic Places within the lease area from lease-related activities until the cultural resource mitigation measures can be implemented as part of an approved mining and reclamation or exploration plan unless modified by mutual agreement in consultation with the State Historic Preservation Officer.

(3) The cost of conducting the inventory, preparing reports, and carrying out mitigation measures shall be borne by the lessee.

(4) If cultural resources are discovered during operations under this lease, the lessee shall immediately bring them to the attention of the Assistant Director or Authorized Officer, or the Authorized Officer of the surface managing agency, if the Assistant Director is not available. The lessee shall not disturb such resources except as may be subsequently authorized by the Assistant Director or Authorized Officer.

Within two (2) working days of notification, the Assistant Director or Authorized Officer will evaluate or have evaluated any cultural resources discovered and will determine if any action may be required to protect or preserve such discoveries. The cost of data recovery for cultural resources discovered during lease operations shall be borne by the lessee unless otherwise specified by the Authorized Officer of the BLM or of the surface managing agency, if different.

(5) All cultural resources shall remain under the jurisdiction of the United States until ownership is determined under applicable law.

SEC. 15. SPECIAL STIPULATIONS (Continued) -

(b) **PALEONTOLOGICAL RESOURCES** - If paleontological resources, either large and conspicuous, and/or of significant scientific value are discovered during mining operations, the find will be reported to the Authorized Officer immediately. Mining operations will be suspended within 250 feet of said find. An evaluation of the paleontological discovery will be made by a BLM approved professional paleontologist within five (5) working days, weather permitting, to determine the appropriate action(s) to prevent the potential loss of any significant paleontological value. Operations within 250 feet of such discovery will not be resumed until written authorization to proceed is issued by the Authorized Officer. The lessee will bear the cost of any required paleontological appraisals, surface collection of fossils, or salvage of any large conspicuous fossils or significant scientific interest discovered during the operations.

(c) **THREATENED, ENDANGERED, CANDIDATE, or OTHER SPECIAL STATUS PLANT and ANIMAL SPECIES** - The lease area may now or hereafter contain plants, animals, or their habitats determined to be threatened or endangered under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*, or that have other special status. The Authorized Officer may recommend modifications to exploration and development proposals to further conservation and management objectives or to avoid activity that will contribute to a need to list such species or their habitat or to comply with any biological opinion issued by the Fish and Wildlife Service for the proposed action. The Authorized Officer will not approve any ground-disturbing activity that may affect any such species or critical habitat until it completes its obligations under applicable requirements of the Endangered Species Act. The Authorized Officer may require modifications to, or disapprove a proposed activity that is likely to result in jeopardy to the continued existence of a proposed or listed threatened or endangered species, or result in the destruction or adverse modification of designated or proposed critical habitat.

The lessee shall comply with instructions from the Authorized Officer of the surface managing agency (BLM, if the surface is private) for ground disturbing activities associated with coal exploration on federal coal leases prior to approval of a mining and reclamation permit or outside an approved mining and reclamation permit area. The lessee shall comply with instructions from the Authorized Officer of the Office of Surface Mining Reclamation and Enforcement, or his designated representative, for all ground disturbing activities taking place within an approved mining and reclamation permit area or associated with such a permit.

(d) **MULTIPLE MINERAL DEVELOPMENT** - Operations will not be approved which, in the opinion of the Authorized Officer, would unreasonably interfere with the orderly development and/or production from a valid existing mineral lease issued prior to this one for the same lands.

(e) **OIL AND GAS/COAL RESOURCES** - The BLM realizes that coal mining operations conducted on Federal coal leases issued within producing oil and gas fields may interfere with the economic recovery of oil and gas; just as Federal oil and gas leases issued in a Federal coal lease area may inhibit coal recovery. BLM retains the authority to alter and/or modify the resource recovery and protection plans for coal operations and/or oil and gas operations on those lands covered by Federal mineral leases so as to obtain maximum resource recovery.

(f) **RESOURCE RECOVERY AND PROTECTION** - Notwithstanding the approval of a resource recovery and protection plan (R2P2) by the BLM, lessor reserves the right to seek damages against the operator/lessee in the event (i) the operator/lessee fails to achieve maximum economic recovery (MER) (as defined at 43 CFR 3480.0-5(21)) of the recoverable coal reserves or (ii) the operator/lessee is determined to have caused a wasting of recoverable coal reserves. Damages shall be measured on the basis of the royalty that would have been payable on the wasted or unrecoverable coal.

SEC. 15. SPECIAL STIPULATIONS (Continued) -

The parties recognize that under an approved R2P2, conditions may require a modification by the operator/lessee of that plan. In the event a coal bed or portion thereof is not to be mined or is rendered unmineable by the operation, the operator/lessee shall submit appropriate justification to obtain approval by the Authorized Officer to lease such reserves unmined. Upon approval by the Authorized Officer, such coal beds or portions thereof shall not be subject to damages as described above. Further, nothing in this section shall prevent the operator/lessee from exercising its right to relinquish all or portion of the lease as authorized by statute and regulation.

In the event the Authorized Officer determines that the R2P2, as approved, will not attain MER as the result of changed conditions, the Authorized Officer will give proper notice to the operator/lessee as required under applicable regulations. The Authorized Office will order a modification if necessary, identifying additional reserves to be mined in order to attain MER. Upon a final administrative or judicial ruling upholding such an ordered modification, any reserves left unmined (wasted) under that plan will be subject to damages as described in the first paragraph under this section.

Subject to the right to appeal hereinafter set forth, payment of the value of the royalty on such unmined recoverable coal reserves shall become due and payable upon determination by the Authorized Officer that the coal reserves have been rendered unmineable or at such time that the operator/lessee had demonstrated an unwillingness to extract the coal.

The BLM may enforce this provision either by issuing a written decision requiring payment of the MMS demand for such royalties, or by issuing a notice of non-compliance. A decision or notice of non-compliance issued by the lessor that payment is due under this stipulation is appealable as allowed by law.

(g) **PUBLIC LAND SURVEY PROTECTION** - The lessee will protect all survey monuments, witness corners, reference monuments, and bearing trees against destruction, obliteration, or damage during operations on the lease areas. If any monuments, corners or accessories are destroyed, obliterated, or damaged by this operation, the lessee will hire an appropriate county surveyor or registered land surveyor to reestablish or restore the monuments, corners, or accessories at the same locations, using the surveying procedures in accordance with the "Manual of Surveying Instructions for the Survey of the Public Lands of the United States." The survey will be recorded in the appropriate county records, with a copy sent to the Authorized Officer.

ATTACHMENT 4:

**U.S. FISH AND WILDLIFE SERVICE
CONCURRENCE LETTER IN RESPONSE TO BLM
FORMAL REQUEST FOR CONSULTATION FOR
THE WEST HAY CREEK COAL LEASE BY
APPLICATION UNDER THE ENDANGERED
SPECIES ACT, SECTION 7**



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
4000 Airport Parkway
Cheyenne, Wyoming 82001


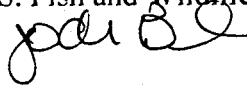
SEP 15 2004
10:00
FEDERAL
WYOMING
CHEYENNE

In Reply Refer To:
ES-61411/W.02/WY8515

SEP 15 2004

Memorandum

To: James K. Murkin, Field Manager, Bureau of Land Management, Casper Field Office, Casper, Wyoming

From:  Brian T. Kelly, Field Supervisor, U.S. Fish and Wildlife Service, Wyoming Field Office, Cheyenne, Wyoming 

Subject: Concurrence for the West Hay Creek Coal Lease by Application Tract

Thank you for your letter and attached biological assessment for the West Hay Creek Lease-by-Application (LBA) tract, dated June 3, 2004, received in the Wyoming Field Office on June 4. Triton Coal Company has filed an application with the Bureau of Land Management (Bureau) to lease Federal coal reserves in a tract located north and adjacent to the Buckskin mine in Campbell County, Wyoming. Under the proposed action the Bureau would hold a competitive coal lease sale and issue a maintenance lease to the successful bidder for the West Hay Creek LBA tract. The legal description of the West Hay Creek LBA tract includes all, or portions of T53N, R72W, Section 17, 18 19 and 20 for a total of approximately 921.2 acres to be leased. In your letter you requested informal consultation for the West Hay Creek Coal LBA tract, located in Campbell County, Wyoming, pursuant to section 7(a)(2) of the Endangered Species Act of 1973 (Act), as amended (50 CFR §402.13). We were unable to complete this consultation until additional information was provided, which was received on September 15, 2004.

The Bureau has made "no effect" determinations for the black-footed ferret. When the Bureau makes a "no effect" determination, concurrence from the Service is not required, although, we do appreciate receiving a copy of the data used to make that determination for our records.

Based on the information provided in the biological assessment and the Ute ladies'-tresses survey report prepared by Habitat Management Incorporated and dated September 2004, the Service concurs with the determinations that the leasing of the West Hay Creek LBA tract "may affect, but is not likely to adversely affect" the bald eagle or the Ute ladies'-tresses orchid.

This concludes informal consultation pursuant to the regulations implementing the Act. This project should be re-analyzed if new information reveals effects of the action that may affect listed or proposed species or designated or proposed critical habitat in a manner or to an extent not considered in this consultation; if the action is subsequently modified in a manner that causes

an effect to a listed or proposed species or designated or proposed critical habitat that was not considered in this consultation; and/or, if a new species is listed or critical habitat is designated that may be affected by this project.

If you have any questions regarding this letter or your responsibilities under the Act, please contact Bradley Rogers of my staff at the letterhead address or phone (307) 772-2374, extension 25.

cc: BLM, Land Law Examiner, Wyoming State Office, Cheyenne, WY (J. Weaver)
BLM, Field Manager, Buffalo Field Office, Buffalo, WY (D. Stanger)
FWS, Federal Activities Specialist, Denver, CO (R. Dach)
WGFD, Statewide Habitat Protection Coordinator, Cheyenne, WY (V. Stelter)
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